

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

ALONZO AUSTIN, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 3:07-cv-00138-MHT-WC
	)	
MODERN WOODMAN OF	)	
AMERICA, et al.,	)	
	)	
Defendants.	)	

**MOTION TO DISMISS**

COMES NOW the defendant, George Clay, and hereby moves this Honorable Court to dismiss the Complaint and all aspects of said Complaint relating thereto as against said defendant, George Clay, and as more specific grounds states as follows:

1. Pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, the Complaint fails to state a claim upon which relief can be granted.

Defendant specifically avers that plaintiff's only claim as against George H. Clay is found in paragraph 13 of plaintiffs' Complaint which states:

**Per Court record, a bond issued for guardian Juanita K. Upshaw, of \$10,000.00 from Principal Lewis's bank account under color of law on May 10, 1993 by George H. Clay, (Alabama Resident Agent).**

Therefore, plaintiff has failed to state any cause of action as against the defendant George H. Clay.

2 Based upon the allegations in the Complaint and dates asserted the defendant avers that any claims of the plaintiff as against George H. Clay are barred by the statute of limitations.

3. Plaintiff fails to make any allegations that the defendant George H. Clay, who is an individual that owns and operates an independent insurance agency in Tuskegee, Alabama, Clay & Associates Insurance, Inc., has acted under color of state law.

s/W. H. Brittain II  
**W. H. BRITTAIN II**  
Attorney for defendant,  
Clay & Associates, Inc. and George Clay  
BALL, BALL, MATTHEWS & NOVAK  
Post Office Box 2148  
Montgomery, AL 36102  
(334) 387-7680  
(334) 387-3222 Fax  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of May, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

**Plaintiff**

**Alonzo Austin**  
*Executor for the estate of Ruth  
H. Lewis*

represented by **Alonzo Austin**  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083  
PRO SE

**Defendant**

**Modern Woodman of  
America**

represented by **Charles D. Stewart**  
Spain & Gillon, L.L.C.  
2117 Second Avenue, North  
The Zinszer Building  
Birmingham, AL 35203  
Email: [cds@spain-gillon.com](mailto:cds@spain-gillon.com)

**Defendant**

**Alfonza Menefee**

*Probate Judge, in his individual  
and official capacities*

represented by **George W. Royer, Jr**  
Lanier Ford Shaver & Payne PC  
PO Box 2087  
Huntsville, AL 35804-2087  
Email: gwr@lfsp.com

**Defendant**

**Howard F. Bryan**

*Circuit Judge, in his individual  
and official capacities*

represented by **Howard F. Bryan**  
101 East Northside Street  
Tuskegee, AL 36083  
PRO SE

**Defendant**

**Deborah H. Biggers**

*Attorney, in her individual and  
official capacities*

represented by **Deborah Hill Biggers**  
Deborah Hill Biggers, Atty at Law  
113 East Rosa Parks Avenue  
Tuskegee, AL 36083  
Email: debbig@debbig.com

**Defendant**

**Fred Gray, Sr.**

*Attorney, in his individual and  
official capacities*

represented by **Joseph C. Espy, III**  
Melton Espy & Williams, PC  
PO Drawer 5130  
Montgomery, AL 36103-5130  
Email: jespy@mewlegal.com

**Defendant**

**Attorney Nathanson**

*in his individual and official  
capacities*

represented by **Joseph C. Espy, III**  
(See above for address)

**Defendant**

**Mason Manor**

represented by **Jack B. Hinton, Jr.**  
Gidiere, Hinton, Herndon & Christman  
904 Regions Tower  
60 Commerce Street  
Montgomery, AL 36104  
Email: dawn@ghhclaw.com

**Defendant**

**City of Tuskegee Police  
Department**

represented by **City of Tuskegee Police Department**  
101 Fonville Street  
Tuskegee, AL 36083  
PRO SE

**Defendant**

**Macon County Sheriff's  
Department**

represented by **George W. Royer, Jr**  
(See above for address)

**Defendant**

**Montgomery City Police  
Department**

represented by **Kimberly Owen Fehl**  
City of Montgomery  
Legal Division  
PO Box 1111  
Montgomery, AL 36101-0111  
Email: kfehl@ci.montgomery.al.us

**Defendant**

**Robert Story**  
*Dr., in his individual and  
official capacities*

represented by **Robert Story**  
802 Crawford Street  
Tuskegee, AL 36083  
PRO SE

**Defendant**

**Alabama State Treasurer's  
Office**

represented by **John Michael Manasco**  
State of Alabama Treasury  
P.O. Box 302510  
State Capitol Building  
600 Dexter Avenue Room S-106  
Montgomery, AL 36130  
Email:  
Mike.Manasco@treasury.alabama.gov

**Defendant**

**Alabama State Board of  
Licensure**

represented by **Bettie J. Carmack**  
Alabama Attorney General's Office  
11 South Union Street  
Montgomery, AL 36130  
Email: bcarmack@ago.state.al.us

**Defendant**

**Alabama Exchange Bank  
President**  
*In his or her individual and  
official capacities*

represented by **Stanley Fitzgerald Gray**  
Gray Langford Sapp McGowan Gray &  
Nathanson  
PO Box 830239  
Tuskegee, AL 36083-0239  
Email: sgray@glsmgn.com

**Defendant**

**Robert Davis**  
*in his individual and official  
capacities*

represented by **Stanley Fitzgerald Gray**  
(See above for address)

**Defendant**

**SouthTrust Bank**

represented by **Jason Robert Bushby**  
Burr & Forman LLP  
420 North 20th Street  
Suite 3100  
Birmingham, AL 35203  
Email: jbushby@burr.com

**Jon Howard Patterson**  
Burr & Forman LLP  
3100 Wachovia Tower  
420 N. 20th Street  
Birmingham, AL 35203  
Email: jpatters@burr.com

**Victor L Hayslip**  
Burr & Forman LLP  
3100 Wachovia Tower  
420 N 20th Street  
Birmingham, AL 35203  
Email: vhayslip@burr.com

**Defendant**

**SouthTrust Bank President**  
*In his or her individual and  
official capacities*

represented by **Jason Robert Bushby**  
(See above for address)

**Jon Howard Patterson**  
(See above for address)

**Victor L Hayslip**  
(See above for address)

**Defendant**

**Regions Bank**

represented by **Jason Robert Bushby**  
(See above for address)

**Jon Howard Patterson**  
(See above for address)

**Victor L Hayslip**  
(See above for address)

**Defendant**

**Juanita K. Upshaw**  
*In her individual and official  
capacities*

represented by **Juanita K. Upshaw**  
P.O. Box 830265  
Tuskegee, AL 36083  
PRO SE

**Defendant**

**George Clay**  
*in his individual and official  
capacities*

represented by **George Clay**  
1205 Main Street  
Tuskegee, AL 36083  
PRO SE

**Defendant**

**Aetna Insurance Co.**

represented by **Pamela B. Slate**  
Slate Kennedy LLC  
PO Box 388  
Montgomery, AL 36101  
Email: pslate@slatekenedy.com

s/W. H. Brittain II

**W. H. Brittain II**

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